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**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SURINDER SINGH ADHI,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-74063

Agency No. A78-642-779

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted September 11, 2006^{**}

Before: PREGERSON, T.G. NELSON, and GRABER, Circuit Judges.

Surinder Singh Adhi, a native and citizen of India, petitions for review of the Board of Immigration Appeals' order ("BIA") dismissing his appeal from an immigration judge's decision denying his applications for asylum, withholding of

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

removal and protection under the Convention Against Torture (“CAT”). We have jurisdiction under 8 U.S.C. § 1252. We review the BIA’s decision for substantial evidence, *see Krotova v. Gonzales*, 416 F.3d 1080, 1084 (9th Cir. 2005), and we grant in part and deny in part the petition for review and remand for further proceedings.

Because the BIA did not make an adverse credibility finding, we accept Adhi’s factual contentions as true. *See id.* (“When the BIA’s decision is silent on the issue of credibility, despite an IJ’s explicit adverse credibility finding, we may presume that the BIA found the petitioner to be credible.”). Substantial evidence does not support the BIA’s determination that Adhi failed to establish past persecution on account of an imputed political opinion because Adhi testified that he was arrested from his workplace and held in police custody for four days, during which time he was accused of being a traitor, slapped, kicked, punched, stripped naked and hit with sticks until he lost consciousness. *See Chand v. INS*, 222 F.3d 1066, 1075 (9th Cir. 2000) (noting the Ninth Circuit’s consistent practice of finding persecution where petitioner was significantly physically harmed); *Vera-Valera v. INS*, 147 F.3d 1036, 1039 (9th Cir. 1998) (“Imputed political opinion exists where one party to a conflict insists to the victim that the victim is aligned with the other side.”).

Because Adhi established past persecution on the basis of an imputed political opinion, he is entitled to a presumption of a well-founded fear of future persecution. 8 C.F.R. § 208.13(b)(1)(2000). We remand for a determination whether Adhi has otherwise established eligibility for asylum and withholding of removal and, if so, whether the government has met its burden of rebutting the presumption. *See INS v. Ventura*, 537 U.S. 12, 16-17 (2002).

Adhi's CAT claim fails because he did not show that it was more likely than not that he would be tortured if returned to India. *See Gui v. INS*, 280 F.3d 1217, 1230 (9th Cir. 2002).

**PETITION FOR REVIEW GRANTED in part; DENIED in part;
REMANDED.**